



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlords and the tenant called in and participated in the hearing. The tenant was assisted by a translator who called into the hearing with the tenant.

The landlord filed this application on April 29, 2013 and submitted documents, including a copy of the tenancy agreement at the time the application was submitted to the Residential Tenancy Branch. At the hearing the landlord said that he had additional documents to submit. The landlords said that they attended at the Residential Tenancy Office in Burnaby on July 23rd with additional documents because they expected the hearing to be conducted as a face to face hearing. They were told that this was a conference call hearing as stated on the Notice Of A Dispute Resolution Hearing. They did not submit any additional documents and returned home to call into the hearing. At the hearing the landlords requested that the hearing be adjourned to allow them to submit additional evidence. The tenant opposed the adjournment request; she request that the hearing proceed and the case against her be dismissed.

The landlords have had ample opportunity to submit additional evidence in support of their claim. The fact that they thought the hearing would be conducted as a face to face hearing does not constitute an excuse for failure to provide documentary evidence in advance of the hearing. They did not provide copies of the new evidence to the tenant or to the Residential Tenancy Branch before the hearing. The tenant has made herself available for the hearing with her interpreter and I find that the matter should not be adjourned. I so advised the parties at the hearing. Both the landlords and the tenant were given the opportunity to present oral testimony and to refer to documentary evidence already submitted.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a suite in the landlord's house in Richmond. The tenancy began on February 6, 2013. The monthly rent was \$1,480.00, payable on 6th day of each month. The tenant paid a \$740.00 security deposit and a further \$600.00 deposit, referred to as a "Hydro Deposit" on February 4, 2013.

The tenant gave the landlord a one month written notice on April 4, 2013 stating that she intended to move out by May 3, 2013. She moved out on April 29, 2013. The tenant's cheque in payment of April rent was dishonoured and refused by her bank, but the tenant paid April rent in cash. The tenant said that she gave one month's notice because of a dispute with the landlord. The police attended at the rental unit. According to the tenant the police officer spoke to the landlord and told the tenant that the landlord agreed that she could move out without penalty.

The landlords have claimed payment of the sum of \$4,300.00. At the hearing the landlords said they were claiming payment of three month's rent because the tenant moved out after only three months of the fixed term tenancy agreement. The landlord said that he has attempted to re-rent the unit, but has been unsuccessful and the rental unit is still vacant. The landlord said that the unit has been advertised for rent. He said that after their experience with the respondent, they want to make sure they rent to a good tenant. The landlord did not provide any documents to show what steps they have taken to advertise the rental unit for rent.

Analysis

The tenant claimed that she was justified in ending the fixed term tenancy early and that the landlord consented to the early end of the tenancy. In the absence of a written agreement consenting to the early end of tenancy, I do not find there is sufficient evidence to establish that the landlord consented to the notice to end the tenancy.

Although the tenant may have ended the fixed term tenancy prematurely, the landlords must show that they made reasonable efforts to mitigate their losses by attempting to re-rent the unit. The landlords have provided no convincing evidence to show that they made efforts to re-rent the unit commencing after they received the tenant's notice on

April 4, 2013. According to the landlord the unit is still unrented, but I have no documents to show what attempts have been taken to advertise the unit for rent.

Conclusion

In the absence of proof that the landlords have made reasonable efforts to mitigate their loss by seeking to rent to a new tenant, this application is dismissed without leave to reapply.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security deposit with interest; I so order and I grant the tenant a monetary order in the amount of \$1,340.00, being the \$740.00 security deposit and the \$600.00 Hydro deposit. This order may be registered in the Small Claims Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 23, 2013

Residential Tenancy Branch

